IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16616 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASANTBHAI BIJALBHAI WAGH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 16616 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR. A.D. OZA, LD. GP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/03/2004

ORAL JUDGEMENT

1. Mr. A.D. Oza, learned GP has placed on record the affidavit in reply filed by respondent No.1, same is kept on record.

2. Heard Mr. Kamlesh Kachhavah, learned advocate for the petitioner and Mr. A.D. Oza,learned GP for the respondent.

3. By this petition under Article 226 of the Constitution of India, the petitioner has been challenging the order of detention No: PCB/PASA/170/2003 dated 5-9-2003 (Annexure-A) passed by Respondent No.1 under section 3 of the Gujarat Prevention of Anti Social Activities Act 1985. (Hereinafter referred to 'PASA Act') and prays for quashing aside the said detention order and setting the petitioner at liberty.

4. The grounds of detention Annexure-B suggests five cases under the provisions of section 379 and 114 I.P. Code came to be registered against the petitioner-detenu on different dates. All these cases relate to theft of TVS Scooty and two wheelers. In the grounds of detention the statements of witnesses relating to the incident dated 29-6-2003 and 3-8-2003 respectively have been referred to. The petitioner, for the purpose of passing the impugned detention order has been branded as 'dangerous person, having been involved in number of cases under the provisions of I.P. Code.

5. The privilege under section 9 (2) of PASA Act has been invoked withholding the identity of the witnesses who gave the statements in unregistered cases.

6. Challenging the order of detention it is submitted by learned advocate for the petitioner that, the offence alleged in the registered cases as well as unregistered cases are directed against an individual and that maintenance of public order is not affected at all, it may at the most be a case of maintenance of 'land & order' and not the 'public order'. It is further stated by Mr. Kachhavah, learned advocate for the petitioner that the main accused Ketanbhai Bhanjibhai Dabhi has been set at liberty by quashing and setting aside the detention order passed under section 3 of the PASA Act against him in Special Civil Application No. 16134 of 2003 vide order dated 4-3-2004 by this Court.

7. It is not disputed that the petitioner is alleged to be the associate of main accused Ketanbhai Bhanjibhai Dabhi, the petitioner in Special Civil Application No.

16134 of 2003. The grounds of detention refers to the present petitioner as one of the associates of main accused Ketanbhai Bhanjibhai Dabhi. Same allegations have been levelled against the present petitioner also in the grounds of detention. Since the detention order passed against co-detenu Ketanbahi Bhanjibhai Dabhi has been quashed and set aside in Special Civil Application No. 16134 of 2003 vide order dated 4-3-2004, for the reason of parity also the impugned detention order against present petitioner is required to be quashed and set aside.

8. In the result, the petition is granted and accordingly allowed. The impugned detention order No: PCB/PASA/170/2003 dated 5-9-2003 (Annexure-A) passed under the Prevention of Anti Social Activities Act, 1985 by Respondent no.1 is quashed and set aside. The petitioner detenu - Vasantbhai Bijalbhai Wagh is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service permitted.

Dt: 4-3-2004 (N.G. Nandi, J)

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